

AMENDED IN SENATE APRIL 12, 2012

SENATE BILL

No. 1300

Introduced by Senator Alquist

February 23, 2012

An act to ~~amend~~ add Section ~~1203.4~~ of 859.5 to the Penal Code, and to add Section 626.8 to the Welfare and Institutions Code, relating to ~~criminal procedure~~ interrogation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1300, as amended, Alquist. ~~Crimes: dismissal after mandatory supervision.~~ *Interrogation: electronic recordation.*

Existing law provides that under specified conditions the statements of witnesses, victims, or perpetrators of specified crimes may be recorded and preserved by means of videotape.

This bill would require the electronic recordation of the entire custodial interrogation of an individual who is in a fixed place of detention, as defined, and who, at the time of the interrogation, is suspected of committing or accused of committing a serious or violent felony. The bill would set forth various exceptions from this requirement, including if the law enforcement officer conducting the interrogation or his or her superior reasonably believes that electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the individual being interrogated, or another individual. The bill would require the prosecution to show by clear and convincing evidence that an exception applies to justify the failure to make that electronic recording. The bill would also require the interrogating entity to maintain the original or an exact copy of an electronic recording made of the interrogation until the final conclusion of the proceedings, as specified. The bill would require the Judicial

Council to develop related jury instructions. The bill would also require the Judicial Council to develop forms to survey interrogations and outcomes in order to ensure compliance with these provisions, as specified. The bill would also require the Department of Justice to develop forms to be submitted to the department in each case of an unrecorded interrogation in order to identify patterns of noncompliance. The bill would make these provisions applicable to juvenile court proceedings, as specified. By imposing these new requirements on local law enforcement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law authorizes a court that determines that a defendant who has fulfilled the conditions of probation, been dismissed prior to the completion of the period of probation, or who the court finds, in its discretion and the interests of justice, has fulfilled the prescribed requirements to dismiss the accusations against the defendant or reverse a verdict of guilty against that defendant. Under existing law, dismissal under these provisions does not exempt the person from having that offense used as a prior conviction in a later prosecution, from the restriction on ownership of a firearm, or other disabilities resulting from the offense.~~

~~This bill would authorize a court to dismiss the accusation against a person who has successfully completed a period of incarceration or mandatory supervision through the county for a felony charge, as specified.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no-yes.~~
~~State-mandated local program: no-yes.~~

The people of the State of California do enact as follows:

- 1 *SECTION 1. (a) The Legislature hereby finds and declares*
- 2 *the following:*
- 3 *(1) According to a national study, false confessions, extracted*
- 4 *during police questioning of suspects, have been identified as the*

1 *second most frequent cause of wrongful conviction. Although*
2 *threats and coercion sometimes lead innocent people to confess,*
3 *even the most standardized interrogations can result in a false*
4 *confession or admission. Mentally ill or mentally disabled persons*
5 *are particularly vulnerable, and some confess to crimes because*
6 *they want to please authority figures or to protect another person.*
7 *Additionally, innocent people may come to believe that they will*
8 *receive a harsher sentence, or even the death penalty, unless they*
9 *confess to the alleged crime.*

10 (2) *Three injustices result from false confessions. First, a false*
11 *confession can result in an innocent person being incarcerated.*
12 *Second, when an innocent person is incarcerated, the criminal*
13 *investigations end and the real perpetrator remains free to commit*
14 *similar, or potentially worse, crimes. Third, victims' families are*
15 *subjected to double the trauma: the loss of, or injury occurring*
16 *to, a loved one and the guilt over the conviction of an innocent*
17 *person. Mandating electronic recording of custodial interrogations*
18 *of both adults and juveniles will improve criminal investigation*
19 *techniques, reduce the likelihood of wrongful convictions, and*
20 *further the cause of justice in California.*

21 (3) *Evidence of a defendant's alleged statement or confession*
22 *is one of the most significant pieces of evidence in any criminal*
23 *trial. Although confessions and admissions are the most accurate*
24 *evidence used to solve countless crimes, they can also lead to*
25 *wrongful convictions. When there is a complete recording of the*
26 *entire interrogation that produced such a statement or confession,*
27 *the factfinder can evaluate its precise contents and any alleged*
28 *coercive influences that may have produced it.*

29 (b) *For these reasons, it is the intent of the Legislature to require*
30 *electronic recording of all custodial interrogations of both adults*
31 *and juveniles. Recording interrogations decreases wrongful*
32 *convictions based on false confessions and enhances public*
33 *confidence in the criminal process. Properly recorded*
34 *interrogations provide the best evidence of the communications*
35 *that occurred during an interrogation; prevent disputes about how*
36 *an officer conducted himself or herself or treated a suspect during*
37 *the course of an interrogation; prevent a defendant from lying*
38 *about the account of events he or she originally provided to law*
39 *enforcement; and spare judges and jurors the time necessary and*
40 *the need to assess which account of an interrogation to believe.*

1 *SEC. 2. Section 859.5 is added to the Penal Code, to read:*

2 859.5. (a) *Except as otherwise provided in this section, any*
3 *custodial interrogation of any person, regardless of whether that*
4 *person is an adult or a minor, who is suspected of committing a*
5 *serious or violent felony offense shall be electronically recorded*
6 *in its entirety. A statement that is electronically recorded as*
7 *required pursuant to this section creates a rebuttable presumption*
8 *that the electronically recorded statement was, in fact, given and*
9 *was accurately recorded by the prosecution's witnesses, provided*
10 *that the electronic recording was made of the custodial*
11 *interrogation in its entirety and the statement is otherwise*
12 *admissible.*

13 (b) *The requirement for the electronic recordation of a custodial*
14 *interrogation pursuant to this section shall not apply under any*
15 *of the following circumstances:*

16 (1) *Electronic recording is not feasible because of exigent*
17 *circumstances. The exigent circumstances shall be recorded in the*
18 *police report.*

19 (2) *The person to be interrogated states that he or she will speak*
20 *to the law enforcement officer or officers only if the interrogation*
21 *is not electronically recorded. If feasible, that statement shall be*
22 *electronically recorded. This requirement also does not apply if*
23 *the person being interrogated indicates during interrogation that*
24 *he or she will not participate in further interrogation unless*
25 *electronic recording ceases.*

26 (3) *The custodial interrogation took place in another jurisdiction*
27 *and was conducted by the officers of that jurisdiction in compliance*
28 *with the law of that jurisdiction, unless the interrogation was*
29 *conducted with intent to avoid the requirements of this section.*

30 (4) *The interrogation occurs when no law enforcement officer*
31 *conducting the interrogation has knowledge of facts and*
32 *circumstances that would lead an officer to reasonably believe*
33 *that the individual being interrogated may have committed a*
34 *serious or violent felony offense for which this section requires*
35 *that a custodial interrogation be recorded. If, during a custodial*
36 *interrogation, the individual reveals facts and circumstances giving*
37 *a law enforcement officer conducting the interrogation reason to*
38 *believe that a serious or violent felony offense has been committed*
39 *for which this section requires that a custodial interrogation be*
40 *electronically recorded, continued custodial interrogation*

1 *concerning that serious or violent felony offense shall be*
2 *electronically recorded pursuant to this section.*

3 *(5) A law enforcement officer conducting the interrogation or*
4 *the officer's superior reasonably believes that electronic recording*
5 *would disclose the identity of a confidential informant or jeopardize*
6 *the safety of an officer, the individual being interrogated, or*
7 *another individual. An explanation of the circumstances shall be*
8 *recorded in the police report.*

9 *(6) The failure to create an electronic recording of the entire*
10 *custodial interrogation was the result of a malfunction of the*
11 *recording device, despite reasonable maintenance of the*
12 *equipment, and timely repair or replacement was not feasible.*

13 *(7) The questions put to a person by law enforcement personnel,*
14 *and the person's responsive statements, were part of a routine*
15 *processing or booking of that person. Electronic recording is not*
16 *required for spontaneous statements made in response to questions*
17 *asked during the routine processing of the arrest of the person.*

18 *(c) If the prosecution relies on an exception in subdivision (b)*
19 *to justify a failure to make an electronic recording of a custodial*
20 *interrogation, the prosecution shall show by clear and convincing*
21 *evidence that the exception applies.*

22 *(d) The presumption of inadmissibility of statements provided*
23 *in this section may be overcome, and a person's statements that*
24 *were not electronically recorded may be admitted into evidence*
25 *in a criminal proceeding, or in a juvenile court proceeding, as*
26 *applicable, if the court finds that all of the following apply:*

27 *(1) The statements are admissible under applicable rules of*
28 *evidence.*

29 *(2) The prosecution has proven by clear and convincing*
30 *evidence that the statements were made voluntarily.*

31 *(3) Law enforcement personnel made a contemporaneous audio*
32 *or audio and visual recording of the reason for not making an*
33 *electronic recording of the statements. This provision does not*
34 *apply if it was not feasible for law enforcement personnel to make*
35 *that recording.*

36 *(4) The prosecution has proven by clear and convincing*
37 *evidence that one or more of the circumstances described in*
38 *subdivision (b) existed at the time of the custodial interrogation.*

1 (e) Unless the court finds that an exception in subdivision (b)
2 applies, all of the following remedies shall be granted as relief for
3 noncompliance:

4 (1) Failure to comply with any of the requirements of this section
5 shall be considered by the court in adjudicating motions to
6 suppress a statement of a defendant made during or after a
7 custodial interrogation.

8 (2) Failure to comply with any of the requirements of this section
9 shall be admissible in support of claims that a defendant's
10 statement was involuntary or is unreliable, provided the evidence
11 is otherwise admissible.

12 (3) If the court admits into evidence a statement made during
13 a custodial interrogation that was not electronically recorded in
14 compliance with this section, the court, upon request of the
15 defendant, shall give to the jury cautionary instructions. The
16 Judicial Council shall develop jury instructions that are
17 substantially similar to the following jury instruction:

18
19 “The law requires the electronic recording of interrogations by
20 law enforcement officers when a defendant is charged with any
21 serious or violent felony. This is done to ensure that you will have
22 before you a complete picture of the circumstances under which
23 an alleged statement of a defendant was made in a custodial setting
24 so that you may determine whether a statement was, in fact, made
25 in that custodial setting and accurately recorded. If there is a
26 failure to electronically record an interrogation, you have not been
27 provided with a complete picture of all the facts surrounding the
28 defendant's alleged statement and the precise details of that
29 statement. By way of example, you cannot hear the tone or
30 inflection of the defendant's and interrogator's voice, or hear first
31 hand the interrogation, both questions and responses, in its
32 entirety. Instead you have been presented with a summary based
33 upon the recollections of law enforcement personnel. Therefore,
34 you should weigh the evidence of the defendant's alleged statement
35 made in a custodial setting with great caution and care as you
36 determine whether the statement was, in fact, made in that custodial
37 setting, and, if so, whether it was accurately reported by state's
38 witnesses, and what, if any, weight it should be given in your
39 deliberations.

1 *You have heard evidence that the defendant made a statement*
2 *to a law enforcement officer in a custodial setting and that the*
3 *statement was not recorded. You are the exclusive judge as to*
4 *whether the defendant made the statement in that custodial setting,*
5 *and as to what was actually said.*

6 *You must first decide whether the defendant, in fact, made that*
7 *statement in a custodial setting, in whole or in part. Among the*
8 *factors you may consider in deciding whether the defendant*
9 *actually made the alleged statement in a custodial setting is the*
10 *failure of law enforcement officials to make an electronic recording*
11 *of the interrogation conducted and the alleged statement itself.*
12 *The fact that a law enforcement officer did not comply with the*
13 *law requiring the electronic recording of the reported statement*
14 *shall be considered by you as a circumstance tending to show that*
15 *the statement was not made in that custodial setting.*

16 *If you find that the defendant did make the statement in that*
17 *custodial setting, you must view the statement as reported with*
18 *caution, because unrecorded oral statements made by a defendant*
19 *out of court to a law enforcement officer should be viewed with*
20 *caution. The failure of the law enforcement officer to comply with*
21 *the law requiring recording of the reported statement shall also*
22 *be considered by you as a circumstance bearing on the weight and*
23 *credibility to be given to the officer's account of the statement.*

24 *The presence of an electronic recording that is recorded in its*
25 *entirety permits but does not compel you to conclude that the*
26 *prosecution has proven that a statement was, in fact, given and*
27 *that the electronically recorded statement was accurately reported*
28 *by the prosecution's witnesses."*

29
30 (f) *The interrogating entity shall maintain the original or an*
31 *exact copy of any electronic recording made of a custodial*
32 *interrogation until a conviction for any offense relating to the*
33 *interrogation is final and all direct and habeas corpus appeals*
34 *are exhausted or the prosecution for that offense is barred by law*
35 *or, in a juvenile court proceeding, as otherwise provided in*
36 *subdivision (b) of Section 626.8 of the Welfare and Institutions*
37 *Code. The interrogating entity may make one or more true,*
38 *accurate, and complete copies of the electronic recording in a*
39 *different format.*

1 (g) (1) Compliance with the electronic recording requirement
2 shall be monitored by the Judicial Council. The Judicial Council
3 shall develop forms to survey interrogations and outcomes and to
4 identify any patterns of noncompliance with the requirements of
5 this section. These forms shall be completed and submitted by the
6 judge and the prosecutor to the Judicial Council for any of the
7 following cases:

8 (A) Cases in which recorded interrogations were introduced as
9 evidence in a criminal proceeding.

10 (B) Cases in which interrogations were not recorded but were
11 nonetheless introduced as evidence in a criminal proceeding.

12 (C) Cases in which interrogations were recorded and a plea of
13 guilty to a felony offense was entered and accepted by the court.

14 (D) Cases in which interrogations were not recorded and a plea
15 of guilty to a felony offense was entered and accepted by the court.

16 (2) Compliance with the electronic recording requirement shall
17 also be monitored by the Department of Justice. The Department
18 of Justice shall develop forms for purposes of identifying any
19 patterns of noncompliance. The forms shall describe whether the
20 person arrested is an adult or a minor, the charges against the
21 person, the location where the interrogation took place, and the
22 exception listed in subdivision (b) that was the primary basis for
23 the failure to record the interrogation. These forms shall be
24 completed and submitted to the department by the interrogating
25 officer or officers in each case of an unrecorded interrogation,
26 regardless of whether the electronic recording is presumed
27 inadmissible into evidence under this section, or is in fact
28 inadmissible under this section.

29 (h) For the purposes of this section, the following terms have
30 the following meanings:

31 (1) “Custodial interrogation” means any interrogation in a
32 fixed place of detention involving a law enforcement officer’s
33 questioning that is reasonably likely to elicit incriminating
34 responses and in which a reasonable person in the subject’s
35 position would consider himself or herself to be in custody,
36 beginning when a person should have been advised of his or her
37 constitutional rights, including the right to remain silent, the right
38 to have counsel present during any interrogation, and the right to
39 have counsel appointed if the person is unable to afford counsel,
40 and ending when the questioning has completely finished.

1 (2) “Electronic recording” means an audio or video recording
2 that accurately records a custodial interrogation.

3 (3) “Fixed place of detention” means a fixed location under
4 the control of a law enforcement agency where an individual is
5 held in detention in connection with any criminal offense that has
6 been, or may be, filed against that person. The term also includes
7 a jail, police or sheriff’s station, holding cell, correctional or
8 detention facility, juvenile hall, or a facility of the Division of
9 Juvenile Facilities.

10 (4) “Law enforcement officer” means any person employed by
11 a law enforcement agency whose duties include enforcing criminal
12 laws or investigating criminal activity, or any other person who
13 is acting at the request or direction of that person.

14 SEC. 3. Section 626.8 is added to the Welfare and Institutions
15 Code, to read:

16 626.8. (a) Subdivisions (a) to (d), inclusive, paragraphs (1)
17 and (2) of subdivision (e), and subdivisions (g) and (h) of Section
18 859.5 of the Penal Code shall apply to any custodial interrogation
19 of a person who is or who may be adjudged a ward of the juvenile
20 court on the grounds that he or she has committed a serious or
21 violent felony offense.

22 (b) (1) Except as otherwise provided in paragraph (2), Article
23 22 (commencing with Section 825) shall apply to any electronic
24 recording or other record made pursuant to this section.

25 (2) The interrogating entity shall maintain an original or exact
26 copy of any electronic recording made of a custodial interrogation
27 until the person is no longer subject to the jurisdiction of the
28 juvenile court, unless the person is transferred to a court of
29 criminal jurisdiction. If the person is transferred to a court of
30 criminal jurisdiction, subdivision (f) of Section 859.5 of the Penal
31 Code shall apply. The interrogating entity may make one or more
32 true, accurate, and complete copies of the electronic recording in
33 a different format.

34 SEC. 4. If the Commission on State Mandates determines that
35 this act contains costs mandated by the state, reimbursement to
36 local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

39 ~~SECTION 1. Section 1203.4 of the Penal Code is amended to~~
40 ~~read:~~

1 ~~1203.4. (a) (1) In any case in which a defendant has fulfilled~~
2 ~~the conditions of probation for the entire period of probation, or~~
3 ~~has been discharged prior to the termination of the period of~~
4 ~~probation, or in any other case in which a court, in its discretion~~
5 ~~and the interests of justice, determines that a defendant should be~~
6 ~~granted the relief available under this section, the defendant shall,~~
7 ~~at any time after the termination of the period of probation, if he~~
8 ~~or she is not then serving a sentence for an offense, on probation~~
9 ~~for an offense, or charged with the commission of an offense, be~~
10 ~~permitted by the court to withdraw his or her plea of guilty or plea~~
11 ~~of nolo contendere and enter a plea of not guilty. If he or she has~~
12 ~~been convicted after a plea of not guilty, the court shall set aside~~
13 ~~the verdict of guilty. In either case, the court shall thereupon~~
14 ~~dismiss the accusations or information against the defendant and,~~
15 ~~except as noted below, he or she shall thereafter be released from~~
16 ~~all penalties and disabilities resulting from the offense of which~~
17 ~~he or she has been convicted, except as provided in Section 13555~~
18 ~~of the Vehicle Code. The probationer shall be informed, in his or~~
19 ~~her probation papers, of this right and privilege and his or her right,~~
20 ~~if any, to petition for a certificate of rehabilitation and pardon. The~~
21 ~~probationer may make the application and change of plea in person~~
22 ~~or by attorney, or by the probation officer authorized in writing.~~
23 ~~However, in a subsequent prosecution of the defendant for any~~
24 ~~other offense, the prior conviction may be pleaded and proved and~~
25 ~~shall have the same effect as if probation had not been granted or~~
26 ~~the accusation or information dismissed. The order shall state, and~~
27 ~~the probationer shall be informed, that the order does not relieve~~
28 ~~him or her of the obligation to disclose the conviction in response~~
29 ~~to a direct question contained in a questionnaire or application for~~
30 ~~public office, for licensure by a state or local agency, or for~~
31 ~~contracting with the California State Lottery Commission.~~

32 ~~(2) Dismissal of an accusation or information pursuant to this~~
33 ~~section does not permit a person to own, possess, or have in his or~~
34 ~~her custody or control a firearm or prevent his or her conviction~~
35 ~~under Chapter 2 (commencing with Section 29800) of Division 9~~
36 ~~of Title 4 of Part 6.~~

37 ~~(3) Dismissal of an accusation or information underlying a~~
38 ~~conviction pursuant to this section does not permit a person~~
39 ~~prohibited from holding public office as a result of that conviction~~
40 ~~to hold public office.~~

~~(4) This subdivision shall apply to all applications for relief under this section that are filed on or after November 23, 1970.~~

~~(b) Subdivision (a) of this section does not apply to a misdemeanor that is within the provisions of Section 42002.1 of the Vehicle Code, to a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, a felony conviction pursuant to subdivision (d) of Section 261.5, or to an infraction.~~

~~(c) (1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.~~

~~(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.~~

~~(d) A court may, in its discretion and in the interests of justice, order the relief provided in this section to a defendant who has successfully completed his or her sentence in county jail or mandatory supervision pursuant to paragraph (1), (2), or (5) of subdivision (h) of Section 1170.~~

~~(e) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse the city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without~~

1 undue hardship, all or any portion of the costs for services
2 established pursuant to this subdivision.

3 (f) (1) Relief shall not be granted under this section unless the
4 prosecuting attorney has been given 15 days' notice of the petition
5 for relief. The probation officer shall notify the prosecuting attorney
6 when a petition is filed, pursuant to this section.

7 (2) It shall be presumed that the prosecuting attorney has
8 received notice if proof of service is filed with the court.

9 (g) If, after receiving notice pursuant to subdivision (f), the
10 prosecuting attorney fails to appear and object to a petition for
11 dismissal, the prosecuting attorney may not move to set aside or
12 otherwise appeal the grant of that petition.

13 (h) Notwithstanding the above provisions or any other provision
14 of law, the Governor shall have the right to pardon a person
15 convicted of a violation of subdivision (c) of Section 286, Section
16 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
17 (j) of Section 289, if there are extraordinary circumstances.